

THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

ROBERT D. BELUE, et al.,

Plaintiffs,

vs.

**A. O. SMITH ELECTRICAL
PRODUCTS COMPANY, a division
of A.O. SMITH CORPORATION, et
al.,**

Defendants.

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CIVIL ACTION NO.

2:06-cv-1034-WKW

JURY DEMAND

PLAINTIFFS' RESPONSE TO MOTION TO DISMISS OR THE
ALTERNATIVE MOTION TO TRANSFER TO THE MDL

Plaintiffs Robert D. Belue, et al., by and through counsel, respectfully submits this response to Defendant John Crane Inc.'s Motion to Dismiss or in the alternative Motion to Transfer to the MDL.

I. PLAINTIFFS' RESPONSE IN OPPOSITION TO MOTION TO
DISMISS

Pursuant to Rule 8 of the Federal Rules of Civil Procedure the complaint filed against Defendant John Crane Inc. properly contained a "short and plain statement of the claim showing that the pleader is entitled to

relief.” F.R.C.P. 8. Thus the complaint adequately states a claim upon which relief can be granted.

Specifically, the complaint alleges that Defendant John Crane Inc.’s products, including but not limited to asbestos-containing packing and gaskets, were produced and/or manufactured by Defendant and placed into the stream of commerce. The court should not grant a motion to dismiss merely because the complaint does not state with precision every element of the offense necessary for recovery. *Federal Trade Commission v. Citigroup Inc.*, 239 F.Supp.2d 1302 (N.D. Ga. 2001).

Furthermore, the complaint specifies that the products and/or materials attributed to Defendant have been identified at Plaintiffs’ workplace during their employment years there. This adds to the sufficiency of the complaint by alleging facts “from which an inference can be drawn that evidence on these material points will be introduced at trial.” 5 Wright & Miller, § 1216 at 154, 156-59.

The Supreme Court has determined that a complaint should not be dismissed for failure to state a claim “unless it appears beyond a doubt that the plaintiff can prove no set of facts” that would entitle relief. *Conley v. Gibson*, 355 U.S. 41, 45-46, (1957). Considering that the complaint’s allegations must be accepted as true and construed in a light favorable to the Plaintiff when considering a motion to dismiss, Defendant has not met the burden of proof showing that no facts support the claim in the complaint, and thus the motion to dismiss for failure to state a claim must be denied. *See Powell v. United States*, 945 F.2d 374, 375 (11th Cir. 1991).

II. PLAINTIFFS’ RESPONSE TO MOTION TO TRANSFER TO THE MDL

Plaintiffs' have no objection to Defendant John Crane's Motion to Transfer Venue to the United States District Court, Eastern District of Pennsylvania for coordinated or consolidated pre-trial proceedings pursuant to 28 U.S.C. § 1407 as a "tag along action" pursuant to the order entered on July 29, 1999 by the Judicial Panel on Multi-District Litigation. Venue is proper as this action could have been initially brought in that court.

Requested this the 4th day of January, 2007.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record by e-mail, and by U.S.

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